

Report From Agency

REPORT TO LEGISLATURE

NR 405, 407, 408 and 484, Wis. Adm. Code
Major source definition and affecting small business

Board Order No. AM-34-07
Clearinghouse Rule No. 07-104

Basis and Purpose of the Proposed Rule

The Department proposes to amend the definition of "major stationary source" in s. NR 405.02(22)(a), such that ethanol production facilities that produce ethanol by natural fermentation, (those included in North American Industry Classification System (NAICS) codes 325193 or 312140), are not included in the Chemical Processing Plant category. NAICS was developed jointly by the U.S., Canada, and Mexico to provide comparability in statistics about business activity across North America. The document North American Industry Classification System United States, 2007 is incorporated by reference in s. NR 484.05(17). The other changes are to ss. NR 405.07(4)(a)20., 407.02(4)(b) and 408.02(21)(e), which will state that fugitive emissions from these ethanol production facilities will no longer be included in determining whether a facility is considered a major source. These rule changes are necessary to ensure that state permit requirements are consistent with federal rules published May 1, 2007.

Currently fuel ethanol production facilities are considered chemical processing plants. As such, if potential emissions of any criteria pollutant exceeds 100 tons per year, the facility is considered to be a major source under the Prevention of Significant Deterioration (PSD) Program. Moreover, the fugitive emissions from such a facility are included when the major source determinations are made for these plants. After this proposed rule change, the major source applicability threshold will be 250 tons per year and the fugitive emissions will not be included when the major source determinations are made for these plants under the PSD program. The change will not have an impact on the Title V operation permit program's, or the nonattainment area new source review program's major source emission threshold level; however, those programs will also no longer require fugitive emissions to be included as a part of the calculation of emissions.

A federal rule clarifying two elements of the major source permitting program was promulgated on January 6, 2004. The first is the addition of a definition of Replacement Unit and the second clarifies a component of the emission calculation used when determining emissions under a plantwide applicability limitation (PAL). US EPA has required permitting agencies to add these elements during the next reopening of the permit program regulations.

The inclusion of a definition of replacement unit and the plantwide applicability limitation (PAL) emission calculation clarification within chs. NR 405 and 408 will not impact existing policies since the term is currently not defined in those chapters. The addition of a replacement unit definition will clarify the use of the term as it applies to emission unit replacement in determining how emissions are calculated in determining applicability of the chapters to plant modifications. The proposed PAL related change will clarify the calculation of allowable emission rates under a PAL.

Summary of Public Comments

No comments were made at the public hearings.

Modifications Made

No modifications were made as a result of public comments.

Appearances at the Public Hearing

December 18, 2007 – Wisconsin Rapids – no appearances

December 19, 2007 – Madison

In support:

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Changes to Rule Analysis and Fiscal Estimate

No changes were required.

Response to Legislative Council Rules Clearinghouse Report

The Department received two comments from the Legislative Council Rules Clearinghouse. The comments and the Department's responses are as follows:

Comment:

1. The second sentence of both s. NR 405.02 (25k) (intro.) and s. NR 408.02 (29s) (intro.) is a substantive provision, which should be removed from the definition of "replacement unit" and placed in another appropriate location in the Administrative Code.

Department Response:

The definition of "replacement unit" in the proposed rule matches that promulgated in the federal rule published in the Federal Register, Vol. 68, No. 216 / Friday, November 7, 2003, pp. 63021 - 63029. To be consistent with the federal rule, the Department recommends adoption of the cited language as proposed without change. Under s. 227.14(1m)(b), Stats., notwithstanding the requirement to adhere to the form and style used by the legislative reference bureau, an agency may use the format of federal regulations published in the Code of Federal Regulations in preparing a proposed rule, if the agency determines the state environmental regulatory program is to be administered according to standards which are similar to standards specified for a federal regulatory program.

Comment:

In both s. NR 405.18(6)(c) and s. 408.11(6)(e), the existing grammatical structure, "...on which actual construction started..." should be retained.

Department Response:

The Department assumes that the Legislative Council Rules Clearinghouse intended to reference s. NR 405.18(6)(e) in its comment, and has made the recommended change both there and in s. NR 408.11(6)(e).

Final Regulatory Flexibility Analysis

The ethanol rule will not have a significant economic impact on any ethanol plant, including any that may be considered as a small business, because its overall impact will be to lessen the requirements that apply to such plants.

The clarifications of plantwide applicability limitation and replacement unit definitions will not affect small businesses as these are clarifications of existing regulations and are not creating new requirements for major sources.

In summary, the proposed rule is not expected to have a significant economic impact on small businesses.